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Honorable Timothy W. Dore
Chapter 11
Hearing Location : Rm. 6301
Hearing Date: June 24, 2016
Hearing Time: 9:30 a.m.
Response Date: June 17, 2016

8 UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 In re:

12 MERIDIAN MORTGAGE INVESTORS FUND V,
13 LLC; et al.

14 Debtors.¹

Case No. 10-17952
(Substantively Consolidated)

**LIQUIDATING TRUSTEE'S
MOTION TO EXTEND
DURATION OF MERIDIAN
INVESTORS TRUST**

15 **I. INTRODUCTION**

16 Mark Calvert, the Liquidating Trustee of the Meridian Investors Trust for the
17 Substantively Consolidated Meridian Funds a/k/a the Meridian Investors Trust (“Meridian
18 Investors Trust”) in Case No. 10-17952, submits the following Motion to Extend Duration of
19 Meridian Investors Trust (the “Motion”). Pursuant to the Chapter 11 Trustee’s and Official
20 Consolidated Investors’ Committee’s Joint Plan of Liquidation (the “Plan”), and this Court’s
21

22 ¹ The Debtors are Meridian Mortgage Investors Fund V, LLC (Case No: 10-17952); Meridian Mortgage Investors
23 Fund II, LLC (Case No. 10-17976); Meridian Mortgage Investors Fund VII, LLC (Case No: 10-17953); Meridian
24 Mortgage Investors Fund VIII, LLC (Case No. 10-17958); Meridian Mortgage Investors Fund VI, LLC (Case No:
25 10-18729); Meridian Mortgage Investors Fund IX, LLC (Case No. 10-18727); Meridian Mortgage Investors Fund
26 X, LLC (Case No: 10-18728); Meridian Real Estate Opportunity Fund I, LLC (Case No: 10-19645); Meridian Real
Estate Opportunity Fund II, LLC (Case No: 10-19644); Meridian Mortgage Investors Fund I, LLC (Case No: 11-
10830); Meridian Mortgage Investors Fund III, LLC (Case No: 11-10833); and MPM Investor Services Inc. (Case
No: 11-10834). Pursuant to the Plan confirmation order entered June 22, 2011, the Cases have been substantively
consolidated and Mark Calvert is the Liquidating Trustee.

MOTION TO EXTEND DURATION
OF MERIDIAN INVESTORS TRUST - 1

1 order approving the Plan, the Meridian Investors Trust was created and approved in order to
2 allow the Liquidating Trustee to administer and liquidate assets of the Debtors' Estates for the
3 benefit of creditors. The Meridian Investors Trust² has a term of (5) years commencing on the
4 effective date of the Plan, July 7, 2011, unless extended by further order of the Bankruptcy
5 Court. Because the Liquidating Trustee has not fully administered the assets of the Meridian
6 Investors Trust—and will be unable to prior to the fifth year anniversary of the trust, July 7,
7 2016—the Liquidating Trustee requests entry of an order extending the term of the Meridian
8 Investors Trust for an additional five years.

9 II. FACTUAL BACKGROUND

10 Frederick Darren Berg ("Berg") operated a massive Ponzi scheme by and through over
11 thirty different affiliated entities owned and controlled by Berg including the Meridian Funds.
12 The Meridian Funds offered and sold promissory notes ("Notes") to investors. On July 9, 2010,
13 involuntary bankruptcy petitions were filed by certain creditors of four of the investment funds,
14 individually and collectively referred to here as the Meridian Funds.³ On July 20, 2010, this
15 Court entered an order appointing Mark Calvert as the Trustee of those Meridian Funds. In the
16 months that followed, eight related entities filed voluntary bankruptcy petitions.⁴ More than 1500
17 claims totaling in excess of \$225 million were filed in the Meridian Funds' bankruptcy
18 proceedings. The large majority of claims were filed by investors in the Meridian Funds who
19 loaned money to, or invested money in, the Funds ("Investors").

20 ² The trust is referred to as the "Liquidating Trust" in the Liquidating Trust Agreement. However, it is now referred
21 to as the Meridian Investors Trust. *See* Dkt. No. 568 (stating that all the assets of the substantively consolidated
22 Debtors were "conveyed to the Meridian Investors Trust" and indicating that the Debtors shall be referred to as the
"Consolidated Meridian Funds a/k/a the Meridian Investors Trust").

23 ³ The order for relief was entered on July 29, 2010 for Meridian Mortgage Investor Fund II, Meridian Mortgage
24 Investor Fund V, Meridian Mortgage Investor Fund VII, and Meridian Mortgage Investor Fund III. *See* Dkt. No. 69.

25 ⁴ Voluntary petitions were filed on behalf of Meridian Mortgage Investor Fund VI, Meridian Mortgage Investor
26 Fund IX, and Meridian Mortgage Investor Fund 10 on July 28, 2010. Orders for relief for those entities were entered
on the same date. Those cases were filed under Case Nos. 10-18729, 10-18728, and 10-18727.

1 A. Creation of the Meridian Investors Trust.

2 On June 22, 2011, the bankruptcy cases of the Meridian Funds were substantively
3 consolidated pursuant to the order confirming the Plan.⁵ See Dkt. No. 427. The Plan also created
4 the Liquidating Trust and approved the Liquidating Trust Agreement. A copy of the Liquidating
5 Trust Agreement is attached as Exhibit A to the Declaration of Mark Calvert filed in support of
6 this Motion. Mark Calvert was named as the Liquidating Trustee of the Meridian Investors Trust.
7 Under the Plan and Liquidating Trust Agreement, all assets of the Meridian Bankruptcy were
8 transferred to the Meridian Investors Trust for the benefit of its Beneficiaries—defined as
9 creditors of the Meridian Bankruptcy holding allowed claims.^{6,7} The Meridian Investors Trust
10 has an initial term of (5) years after the Effective Date of the Plan—which was July 7, 2011. See
11 Dkt. No. 473. Thus, absent an extension of the initial term of the Meridian Investors Trust, the
12 duration of the Meridian Investors Trust will expire on July 7, 2016.

13 B. Administration of the Meridian Investors Trust to Date.

14 The assets of the Meridian Investor Trust include the following: various causes of action
15 against Investors in the Meridian Funds for avoidance and recovery of fictitious interest and/or
16 fraudulent transfers; causes of action against non-investor third parties primarily for avoidance
17 and recovery of fraudulent transfers; and loan and real estate portfolios that were held by the
18 Meridian Funds. As explained herein, the Liquidating Trustee has administered a substantial
19 portion of trust assets for the benefit of the Trust’s beneficiaries and resolved the vast majority of
20 its causes of action. The Liquidating Trustee has made interim distributions to beneficiaries of
21

22 ⁵ This Motion refers to the consolidated bankruptcy proceedings as the “Meridian Bankruptcy.”

23 ⁶ Beneficiaries are defined in Section 1.1(d) of the Liquidating Trust Agreement as holders of Allowed
24 Administrative Claims, Allowed Priority Tax Claims, and Allowed Claims in Classes 1, 2, and 3.

25 ⁷ The Plan also constitutes a compromise among the bankruptcy estates of the Meridian Funds and those investors
26 who accepted the Plan by voting in favor of the Plan and agreeing to the terms of the compromise in timely
submitted documentation acceptable to the Plan Proponents (“Electing Investors”). The compromise is referred to as
the “Plan Global Investor Settlement.”

1 the trust since confirmation of the Plan. However, because the Liquidating Trustee has not fully
2 administered the assets of the Meridian Investors Trust it is necessary to continue its duration
3 beyond the initial five-year term contemplated by the Liquidating Trust Agreement.

4 In 2012, the Liquidating Trustee identified 186 investors against whom the Trust held
5 potential fraudulent transfer claims for either recovery of fictitious interest/profit on their
6 investments in the Meridian Funds, or for recovery of their principal investment based on lack of
7 good faith. Before filing any lawsuits, the Liquidating Trustee communicated with the
8 defendants and negotiated a resolution with at least 107 of the investors. Between June and July
9 2012, the Liquidating Trustee filed more than 50 adversary proceedings against Investors in the
10 Meridian Funds seeking the avoidance and recovery of Fictitious Interest and/or Fraudulent
11 Transfers. The Liquidating Trustee also sued third parties who were the recipients of fraudulent
12 transfers but who were not Investors in the Meridian Funds. Fifteen of the over fifty lawsuits
13 were settled prior to mediation, and over the course of the next two years, the overwhelming
14 majority of those cases settled or were otherwise resolved. The Liquidating Trustee's resolution
15 of these cases resulted in a recovery of approximately \$5,285,000, for beneficiaries of the
16 Meridian Investors Trust.

17 As of September 2014, only five cases against Investors in the Meridian Funds remained:
18 three in which the defendant-investor had defaulted and judgments were entered, one in which an
19 agreed judgment was entered,⁸ and one brought against Dr. George Steven Kooshian that
20 proceeded to trial before U.S. District Judge Richard A. Jones in October 2014. *See In re Mark*
21 *Calvert*, W.D. Wash. Case No. 2:12-cv-01585-RAJ (Dkt. No. 88). In the Kooshian case, the
22 District Court determined that Mr. Berg had conducted a Ponzi scheme and entered judgment
23 against Mr. Kooshian in the amount of \$781,798.66, with annual interest of 12%. Mr. Kooshian
24 appealed the judgment entered against him. His appeal is currently pending before the Ninth

25 ⁸ See Adv. Pro. No. 12-01476, Dkt. No. 97.
26

1 Circuit Court of Appeals under Court of Appeals Docket No. 15-35465. With respect to the three
2 cases in which the investor-defendants defaulted, the Liquidating Trustee obtained entry of
3 default judgments on December 9, 2015.⁹ While the Liquidating Trustee obtained judgments
4 against these defendants, he has not yet satisfied the judgments.

5 With respect to the claims against non-investor defendants, the Liquidating Trustee
6 identified eleven different defendants against whom the Trust held claims. The Liquidating
7 Trustee settled his claims against two of the defendants before filing suit, and sued the remaining
8 nine defendants¹⁰ Eight of the lawsuits against third-party non-investor defendants have settled
9 or were otherwise resolved, resulting in a recovery of approximately \$15 million before
10 deducting professional expenses Recently, the Liquidating Trustee resolved the Trust's claims
11 against Moss Adams LLP—the auditor of certain of the Meridian Funds. The settlement reached
12 by the Liquidating Trustee, the amount of which is confidential, resulted in the single largest
13 recovery for beneficiaries of the Liquidating Trust to date. The Liquidating Trustee now believes
14 that the total dividend to beneficiaries of the Liquidating Trust will be in excess of 25%.

15 Through December 31, 2015, the Meridian Investors Trust had distributed a total of
16 \$14,996,593 on \$154,927,252 in allowed claims. In addition to potential recoveries the
17 Liquidating Trustee may obtain from ongoing litigation and the enforcement of judgments, the
18 Meridian Investors Trust has assets consisting of its loan and real estate portfolios. The loan and
19 real estate portfolios cannot be readily reduced to cash, and require additional time to liquidate.
20 As of December 31, 2015, the Meridian Investors Trust had an estimated value of \$5,023,678,
21 after accounting for estimated future professional fees of \$500,000. The valuation of the Trust
22 consists of cash on hand, the Trust's loan portfolio, and real estate owned. The value at
23 December 31, 2015 did not include the Moss Adams settlement funds and other potential

24 ⁹ See Adv. Pro. Nos. 12-01487, 12-01483, 12-01511.

25 ¹⁰ See Adv. Pro. Nos. 12-01602, 12-01767, and Adv. Pro. No. 12-01649; Adv. Pro. Nos. 12-01624, 12-01621, 12-
26 01619, 12-01623, 12-01625, 12-01626, 12-01620.

1 recoveries on judgments, and the Trustee therefore will distribute significant additional funds to
2 creditors from the assets of the Trust.

3 Because there are additional assets held by the Meridian Investors Trust that must be
4 administered by the Liquidating Trustee, it is necessary to extend the duration of the Meridian
5 Investors Trust beyond its initial term. The Liquidating Trust Agreement provides, in Section
6 11.4, that this Court shall have “exclusive jurisdiction over any matters arising out of or in
7 connection with the transactions contemplated by this Agreement.” In addition, the Plan
8 provides, in Article XII.11, that the Bankruptcy Court shall have and retain jurisdiction over any
9 matters that may arise in connection with or are related to the Liquidating Trust Agreement.

10 **III. AUTHORITY**

11 The duration of the Liquidating Trust is described in Section 10.1 of the Liquidating
12 Trust Agreement. Section 10.1 states that the Liquidating Trust and its provisions are effective
13 until the fifth anniversary of the Effective Date of the Plan but that the termination date “*may be*
14 *extended for one or more finite terms subject to the approval of the Bankruptcy Court upon a*
15 *finding that the extension is necessary to its liquidating purpose.*” (emphasis added). The
16 extension must be approved by the Bankruptcy Court in the six month period prior to termination
17 of the initial five-year term of the Meridian Investors Trust. *See id.* The Liquidating Trustee’s
18 authority to seek an extension of the duration of the Trust is also provided for under the terms of
19 the Plan. Article II.C. of the Plan states that the “term of administration of the Liquidating Trust
20 shall be five (5) years after the Effective Date unless extended by further order of the Bankruptcy
21 Court.”

22 The Liquidating Trustee requests that the Court enter an order extending the duration of
23 the Meridian Investors Trust because doing so is necessary to the Trust’s liquidating purpose.
24 One of the principal stated purposes of the Liquidating Trust is “to reduce to Cash or otherwise
25 liquidate transfer, or dispose of the Liquidating Trust Assets or any part thereof or any interest
26

1 therein upon such terms as the Liquidating Trustee determines to be necessary, appropriate, or
2 desirable” Liquidating Trust Agreement, § 2.1. As described in this Motion, and in the
3 Declaration of Mark Calvert filed in support of the Motion, there are significant assets left for the
4 Liquidating Trustee to administer on behalf of the beneficiaries of the Trust in fulfillment of the
5 Trust’s purposes. In particular, the Liquidating Trustee must continue administration of the
6 Meridian Investors Trust in order to liquidate the remaining loan and real estate portfolio, resolve
7 the appeal of the judgment entered against Mr. Kooshian, pursue collection of judgments held by
8 the Trust and make further distributions to creditors.

9 IV. CONCLUSION

10 For the foregoing reasons, the Liquidating Trustee requests that the Court enter an order
11 that extends the duration of the Meridian Investors Trust an additional five years, to July 7, 2021,
12 and reserves the right of the Liquidating Trustee to seek additional extensions of the duration of
13 the Trust as may be necessary.

14 DATED this 3rd day of June, 2016.

15 K&L GATES LLP

16
17 By /s/Brian T. Peterson
18 Michael J. Gearin, WSBA # 20982
19 David C. Neu, WSBA #33143
20 Brian T. Peterson, WSBA #42088
21 Attorneys for Mark Calvert, Liquidating
22 Trustee
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CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a paralegal in the law firm of K&L Gates LLP, and on June 3, 2016, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 3rd day of June, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans